Supreme Court, U.S.
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NO

IN THE SUPREME COURT OF THE UNITED STATES

PATRICK JAY CONELY
PETITIONER

v.

MICHIGAN,
JENNIFER M. GRANHOLM. GOVERNOR OF THE STATE OF MICHIGAN/MICHIGAN,
MICHAEL A. COX, ATTORNEY GENERAL FOR THE STATE OF MICHIGAN/MICHIGAN
RESPONDENTS

ON PETITION FOR WRIT OF CERTIORARI TO REVIEW THE ORDER OF THE MICHIGAN SUPREME COURT DATED JANUARY 30, 2006 ON REHEARING

PETITION FOR WRIT OF CERTIORARI
with Appendix

Patrick Jay Conely
Citizen of the United States
in propia persona
c/o 4961 Walsh Drive
P.O. BOX 361
Brighton, Michigan state, in the United States [48116]
Petitioner
(810) 227-1298

To the Honorable Justices of the Supreme Court of the United States.

Whereas in this petition to the Supreme Court of the United States Patrick Jay Conely, natural Citizen of the United States, Petitioner in this cause of action respectfully presents his petition for writ of certiorari, and submit the following reasons why his prayer should be granted:

Patrick Jay Conely, Petitioner, Citizen with his private domicile in the sovereign United States Pleads the Constitution of the United States in Bar of the action, notwithstanding which the court and the justices of the United States Supreme Court gives judgment against him in the particular matters now before the Court of the Union of the United States saying "the lawful demand of one's rights" jus prosequendi in judicio quod alicui debetur.

This is to show there can be "a case in law and equity". Arising under the Constitution to which the judicial power does extend arising under section 8 of Article 1 of the Constitution of the United States and under section 5 of the Fourteenth Amendment is established [p]ursant to the affirmative powers of congress.

QUESTIONS PRESENTED

I - Has the State of Michigan meet the burden of proof to control the private property of Patrick Jay Conely?

II – Is Patrick Jay Conely grandfathered in his right to operate a salvage operation?

III – Are the Statutes of the State of Michigan as most defined in Count I, II and III of the criminal complaint taken in the name of The people of the State of Michigan, the State of Michigan ex-post facto to the Constitution of the United States?

IV Were Patrick Jay Conely's Fifth and Fourteenth Amendment Rights violated when The People of the State of Michigan, the State of Michigan failed to apprise Mr. Conely of the statutes defined in Counts I, II and III prior to filing the State of Michigan criminal complaint No. 01-5883 SM.

PARTIES TO THE PROCEEDINGS

Petitioner

This proceeding in the Supreme Court of the United States involves a Petition for Writ of Certiorari to the Michigan Supreme Court.

The party is the Petitioner, Patrick Jay Conely, c/o 4961 Walsh Drive, Brighton, P.O. BOX 361, Michigan, in the United States [48116] (810) 227-1298. Petitioner, Patrick Jay Conely in propia persona.

Under Rule 29 (4) the Solicitor General of the United States of America is served a copy of the petition for Writ of Certiorari, at the Department of Justice, 10th and Constitutional Ave., N.W., Washington in the city of Washington, in the district of Columbia the seat of the government of the United States.

The questions raised by the petitioner, involve questions of the constitutionally and application of the Statutes of the State of Michigan, in the State, in this State referring to The State of Michigan Governmental actions in Michigan and the Constitution and the laws of the United States, Articles and Amendments.

RESPONDENTS

The State of Michigan/Michigan is named as the respondent in this action before the Supreme Court of the United States as the moving party in the action in the State of Michigan 53rd. District Court.

The State of Michigan/ Michigan has a regular place of business at the ROMNEY BUILDING, 111 SOUTH CAPITAL AVENUE, LANSING, MICHIGAN.

The Governor of the State of Michigan/Michigan, Jennifer M. Granholn has a regular place of business at the ROMNEY BUILDING, 111 SOUTH CAPITAL AVENUE, LANSING, MICHIGAN.

Respondent, Michael A. Cox, Attorney General for the State of Michigan/ Michigan is the Chief Prosecuting Attorney for the State of Michigan/Michigan, in the State, in this State. Michael A. Cox has a regular place of business at the Law building, 525 Ottawa, Lansing, Michigan state/ State of Michigan.

CONSTITUTIONAL PROVISIONS STATUTES, RULES AND TREATIES INVOLVED

The constitution of the United States, as amended of the original Constitution of 1776, fifth and fourteenth amendment of the Bill of Rights of the Congress of the United: States of Article the fifth; the Fourteenth Amendment to the Constitution of the United States for the original State of the Union of the United States; Article III § 2 of the Constitution of the United States; Article IV § 1 of the Constitution of the United States; 41 Cong. Rec. 2752; the Buck-Act 4 U.S.C. §§ 105-110.

PROCEDURAL HISTORY OF THE PROCEEDING IN THE STATE OF MICHIGAN COURTS

Procedural history of the proceeding of the State of Michigan criminal prosecution of Patrick Jay Conely, Citizen,

Petitioner can be review pursuant to **Rule 14** in the **Appendix A through E** from the proceeding in the State of Michigan 53rd District Court to the appeal in the Michigan/State of Michigan Supreme Court on Denial of Rehearing.

This petition for writ of certiorari is filed timely within 90 days of the Order of the Michigan Supreme Count on rehearing dated January 30, 2006.

This petition is filed in good faith by the petitioner and requests procedural due process pursuant the Fifth and Fourteenth Amendment of the deprivation of liberty and property as most respectfully presented in his writ of certiorari

Petitioner request this court review the Addendum - A - of the Essential Elements Rule and Article IV, § , cl1 of the Constitution of the United States.

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Count I - - - SOLID WASTE - - - DISPOSAL OF REFUSE AT NON-LICENSED FACILITY did dispose of refuse at a place other that a disposal area licensed under the Solid Waste Management Part; contrary to M.C.L. 324.11512 (1); M.S.A. 13A. 11512 (1), [324.115121], MISDEMEANOR: $1,000.00 fine (see M.C.L. 324.11549) 2

Count II - - - SOLID WASTE - - -
ESTABLISHING A DISPOSAL AREA
WITHOUT A PERMIT did establish a
disposal area without first obtaining a
construction permit from Department of
Natural Resources; contrary to
M.C.L. 324.11509 (1); M.S.A. 11509 (1),
[324.115091], MISDEMEANOR:
$1,000.00 fine [see M.C.L. 324.11549 2

Count III - - - SOLID WASTE - - -
OPERATING DISPOSAL AREA
WITHOUT LICENSE, did conduct,
manage, maintain, or operate a disposal
area without having a license from
the Department of Natural Resources;
contrary to M.C.L. 324.11512 (1);
M.S.A. 13A. 11512 (2),[324.115122]
MISDEMEANOR: $1,000.00 fine
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Addendum- A-

Essential Evidence Rule

Patrick Jay Conely, Petitioner, natural Citizen of the United States respectfully petitions the Supreme Court of the United States for Writ of Certiorari to the Michigan Supreme Court. Rehearing Order Denied Entered January 30, 2006.

OPINION BELOW

The opinion of the Michigan Supreme Court on rehearing to the petitioners petition see **Appendix – A.**

The opinion of the State of Michigan Supreme Court to the petition for hearing of the petitioners criminal conviction reversed in the State of Michigan Court of Appeals on rehearing appears in the **Appendix – B.**

JURISDICTION

The date on which the Michigan Supreme Court decided my case on rehearing was January 30, 2006. **Appendix – A** .

A timely petition for hearing was denied by the Michigan Supreme Court on the 30th of January 2006.

The jurisdiction of this court is invoked pursuant to 28 U.S.C. § 1257 (a) of 28 U.S.C. § 1.

Patrick Jay Conely, Petitioner, sovereign with his private domicile in the sovereign United States pleads the Constitution of the United States in Bar of the action, notwithstanding which the court and the Justices of the United States Supreme Court gives judgment against him in the particular matters now before the Court of the Union of the

United States saying "the lawful demand of one's rights" jus prosequendi in judicio quod alicui debetur.

Pursuant **41 Cong.Rec. 2752.** The bill was intended to create "the opportunity to settle important questions of law, its "great purpose" being to secure the ultimate decision of the court of final resort on questions of law; Article III, §2.

STATEMENT OF CASE

This cause arose with The People of the State of Michigan The State of Michigan filed a criminal complaint in the State of Michigan 53rd District Court. **The criminal complaint appears in the Appendix — E.**

The State of Michigan alleges that PATRICK JAY CONELY has violated the laws (Statutes) as follows;

Count I - - - SOLID WASTE - - - DISPOSAL OF REFUSE AT NON-LICENSED FACILITY did dispose of refuse at a place other that a disposal area licensed under the Solid Waste Management Part; contrary to M.C.L. 324.11512 (1); M.S.A. 13A. 11512 (1), [324.115121],MISDEMEANOR: $1,000.00 fine (see M.C.L. 324.11549).

Count II - - - SOLID WASTE - - - ESTABLISHING A DISPOSAL AREA WITHOUT A PERMIT did establish a disposal area without first obtaining a construction permit from Department of Natural Resources; contrary to M.C.L. 324.11509 (1); M.S.A. 11509 (1), [324.115091], MISDEMEANOR: $1,000.00 fine [see M.C.L. 324.11549]

Count III - - - SOLID WASTE - - - OPERATING DISPOSAL AREA WITHOUT LICENSE, did conduct,

manage, maintain, or operate a disposal area without having a license from the Department of Natural Resources; contrary to M.C.L. 324.11512 (1); M.S.A. 13A. 11512 (2),[324.115122] MISDEMEANOR: $1,000.00 fine [see 324.11549]

Patrick Jay Conely, was arrested on a warrant out of the State of Michigan 53-B District Court. The warrant (attached appears in the **Appendix – E**), registration of action in the State of Michigan 53-B Judicial District Court Copy of Complaint, and copies of the State of Michigan Statutes that Patrick Jay Conely violated three misdemeanor charges.

This warrant failed to allege that this action occurred in the district of the State of Michigan, in the State, in this State, See the Buck Act Title 4 U.S.C. §§ 105-108; State enclaves. The Michigan Constitution for 1963 has no Boundaries and that Patrick Jay Conely is doing business with the several States of the United States of America under the Commerce Clause having the authority to regulate commerce. This Warrant further lacks the authority to act citing that the "Statute(s)" that Patrick Jay Conely violated are the Laws of the United States. Michigan state is a sovereign state of the original 50 Union of United States, and the State of Michigan the foreign United States of America. See The United States Government Manual at Page 354. Following a hearing, the court held that Patrick Jay Conely was guilty of Count I, II, and III of the charges filed by The People of the State of Michigan The State of Michigan.

Following a bench trial Patrick Jay Conely was found guilty of Counts I, II, and III three separate misdemeanors.

Patrick Jay Conely posted the $1,000.00 (dollar) appeal bond that stayed the order and judgement of the State of Michigan 53rd District Court pending final judgment of the Supreme Court of the United States.

Patrick Jay Conely's attorney, Douglas D. Cameron petitioned the Circuit Court for the County of Livingston to review the order and judgment of the 53rd District Court, the Circuit Court reversed the conviction, order and judgement of the State of Michigan 53rd District Court. **The order and judgement appears in the Appendix — D.**

The People of the State of Michigan, appellant petitioned the Court of appeals for the State of Michigan to reverse the judgement of the Circuit court for the County of Livingston, Patrick Jay Conely, appellee responded by and through his attorney, Douglas D. Cameron.

After several briefs being filed by the parties, the appellant and appellee the Court of Appeals for the State of Michigan reversed the judgement of the Circuit Court for the County of Livingston. **The order of the Court appears in the Appendix – C.**

Patrick Jay Conely, appellee/petitioner, petitioned the State of Michigan Supreme Court to review the order and

judgement of the Court of Appeals for the State of Michigan. The order and judgement appears in the **Appendix – C .**

Patrick Jay Conely, petitioner moving by and through his attorney, Douglas A McKinney petitioned the Michigan Supreme Court for rehearing. The petition to the Michigan Supreme Court was denied. The order and judgement appears in the **Appendix – A .**

Petitioner Patrick Jay Conely petitions this Supreme Court of the United States for Certiorari to the Michigan Supreme Court for review of the judgment of the Michigan Supreme Court and for Writ of Certiorari to the Michigan Supreme Court.

Petitioner, Patrick Jay Conely in his Petition to the Supreme Court of the United States raises several issues for the first time.

I - Has the State of Michigan meet the burden of proof to control the private property of Patrick Jay Conely?

The object of the law is for the protection of the people of the state of Michigan. Where there is ambiguity in criminal statute, doubts are resolved in favor of the defendant. See **Adamo Wrecking Co. vs. U. S., U.S. Mich. 1978, 98 S. Ct. 566, 434 U.S. 275, 54 L.Ed. 2d. 538 (1978).**

Patrick Jay Conely's operation of sorting garbage and collecting salvageable recyclable steel, copper, brass and

aluminum started his operation about 22 years prior to The People of the State of Michigan, The State of Michigan filed this criminal complaint. The Statutes in the criminal complaint in Counts I, II, and III were enacted in 1995. Ex-post facto to the Constitution of the United States.

Patrick Jay Conely, Petitioner, has an operation of recovering and salvaging and recycling of copper, brass, aluminum and steel from the collection of garbage that was established on or about 1980 Prior to 1980 Mr. Conely's father had conducted operations on this property also. See saving clause of the Michigan Constitution and the "grandfather clause."

This Criminal action by the State of Michigan restricts the control and operations of Patrick Jay Conely's use of this private property, (inverse condemnation) in the 53-B Judicial District Court, and has infringed upon Conely's personal property right under the Land-Grant by the Government of the United States. See **Griffin vs. United States, 168 F.2d. 457 (1948)**; The title to this land will remain in the name of the **United States. United States vs. Oregon, 295 U.S. 1 (1935); United States vs. Board of Commrs., 323 U.S. 804 (1944)** and this land is not subject to state taxation, **McGoon vs. Scales, 76 U.S. 23 (1870).**

The 53rd District Court of the State of Michigan is

incapable of declaring or determining Patrick Jay Conely's legal Rights Privileges and Immunities pursuant to Article IV § 2, Clause 1, Constitution, and that Article VI § 2, of the Supremacy Clause. This Citizen of the United States is only bound by the Laws and the Constitution for the United States. See Twenty-Fourth-Congress, Sess I, Chap. CCXXXIV. The Laws of the United States shall have the same force and effect within the State of Michigan, as elsewhere within the United States. **Pursuant to the acts of the Twenty-Fourth-Congress, Sess. I, Chapter XCIX section 4, Act of June 23, 1836, Ch. 121 - - - "And the said State of Michigan shall in no case and under no pretence whatsoever, impose any tax, assessment, or imposition of any description upon any land of the United States within its limits. Approved", June 15, 1836.**

Petitioner cannot be defined as a statutory "person" lumped together in statute with corporations or other fictitious entities. "Sovereignty itself is, of course, not subject to law, for it is the author and source of law; but in our system, while sovereign powers are delegated to the agencies of government, sovereignty itself remains with the people, by whom and for whom all government exists and acts." **Yick Wo v. Hopkins, 118 U.S. 356,370 (1886).**

Petitioner's, Right`s, Privileges and Immunities are

preserved in Part 1 Short Title and Savings Clause as a Citizen of the United States of Public Acts 1994 - - No. 451. See **1 U.S.C. § 109, Federal Saving Statute; Hamm vs. CITY OF ROCK HILL ,379 U.S. 306, (1964).**

Public Act 1994 - - - No. 451, is vague and under the vagueness doctrine. Under this principle, a law which does not fairly inform a petitioner. Citizen of what is commanded or prohibited is unconstitutional as violative of due-process.

"AN ACT to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, water, and other natural resources of the state; to prescribe the power and duties of certain state and local agencies and provide remedies; to provide for certain charges, fees, and assessments; to prescribe penalties and remedies; to repeal certain parts of this act on a specific date; and to certain acts and parts of acts."

Petitioner argues that Counts II, and III are in violation of the **Double Jeopardy Clause** see **United States v. Dixon, 509 U.S. 688 (1993) see Grady v. Corbin, 495 U.S. 508 (1990).** The conviction on "inter alia" constitutional double jeopardy grounds barring prosecution of Counts II, and III; **Grady at 515-524, 521-522**. The Fifth Amendment prohibits

successive prosecutions for the same criminal actor, transactions under two criminal statutes elements are the same.

II – Is Patrick Jay Conely grandfathered in his right to operate a salvage operation?

Licensed owners and operators are generally defined as statutory "Persons" in MCL 257.40, to be corporations or their legal successors. This sovereign citizen cannot be defined as a statutory "person," lumped together in a statute with corporations or other fictitious entities. "Sovereignty itself is, of course, not subject to law, for it is the author and source of law; but in our system, while sovereign powers are delegated to the agencies of government, sovereignty itself remains with the people, by whom and for whom all government exists and acts." ***Yick Wo V. Hopkins, 118 U.S. 356,370 (1886).***

"The individual may stand upon his constitutional rights as a citizen. He is entitled to carry on his private business in his own way. His power to contract is unlimited. He owes no duty to the State or to his neighbors to divulge his business, or to open the doors to an investigation, so far as it may tend to criminate him. He owes no such duty to the State, since he receives nothing therefrom beyond the protection of his life and property. His rights are such as existed by the law of the land long antecedent to the organization of the State, and can only be taken from him by due process of law and in

accordance with the Constitution. Among his rights are a refusal to incriminate himself and the immunity of himself and his property from arrest or seizure except under a warrant of the law. He owes nothing to the public so long as he does not trespass upon their rights. On the other hand, the corporation is a creature of the State. It is presumed to be incorporated for the benefit of the public. It receives certain special privileges and franchises, and holds them subject to ~~the~~ laws of the State and the limitations of its charter. Its powers are limited by law and the United States Constitution. It can make no contract not authorized by its charter. Its rights to act as a corporation are only preserved to it so long as it obeys the laws of its creation; ***Hale v. Henkel, 201 U.S. 43,75 (1906).***

In Hale vs. Henkel, the Supreme-Court said " the individual may stand upon his constitutional rights as a citizen. He is entitled to carry on his private-business in his own way. His power to contract is unlimited." Mr. Conely owes no such duty [to submit his books and papers for an examination] to the State; since they received nothing thereof, beyond the protection of their life and property. "These rights are such as they exist by the law of the land [Common-Law] long antecedent to the organization of the State, and can only be taken by due-process of law and in accordance with the Constitution. He owes nothing to the public so long as he does

not trespass upon their rights", **Hale vs. Henkel , 207 U.S. 43 at 47, (1905).**

The Supreme Court of the United States held in **Miller vs. Milwaukee , 272 U.S. 713 (1927)** that if a statute is part of an unlawful scheme to reach a prohibited result, ... "the statute must fail" This was again upheld in **Mc Callen vs. Massachusetts, 279 U.S. 620, 630 (1929).**

" Discrimination is an act of treating differently two persons or things under like circumstances"; Nat'l Life Insurance Co. vs. United-States, 277 U.S. 508,630 (1928).

As far back as 1886 the U.S. Supreme Court was concerned with the unjust and illegal discriminations which were running rampant. The Court frowned upon law administered with an " unequal hand."

> **" .... so as practically to make unjust and illegal discrimination between persons in similar circumstances material to their rights, the denial of equal justice is still within the prohibition of the constitution". Yick Wo vs. Hopkins, supra at *118 U.S. 356 (1886).***

The Courts cannot be the exclusive territory of the legal "elite corps" but must be open to all the Sovereign People alike on an equal basis.

The fact that Patrick Jay Conely is not a Licensed

Transfer Facility does not give the People of the State of Michigan the right to charge Patrick Jay Conely with a crime when no crime(s) has been committed under (common law) the Constitution of the United States. The State of Michigan cannot stand alone in an action taken against a Citizen of the United States without a damaged Citizen see **Kalina v. Fletcher, 522 U.S. 118 (1997).** The 14th Amendment section one and five of the United States Constitution holds the States to this due process clause. Licenced or not the due process clause applies and shall be equal in an action at law.

In speaking of controlling Constitutional law as opposed to mere statutory law, Chief Justice Marshall held ....

"Those then, who Marshall said; controvert this principle, that the constitution is to be considered, in court as a paramount law, are reduced to the necessity of maintaining that courts must close their eyes on the constitution and see only the law".

"This doctrine would subvert the very foundation of all written ... constitutions"; **Marbury vs. Madison, 5 U.S. 137, 176 (1803).**

Patrick Jay Conely, Petitioner, claims sovereign immunity; "[T]he sovereign . . . cannot in any way be subject to the commands of another, for it is he who makes law". J. Eliot cited Baldus for the crux of the theory: Majesty is "a fulness of power subject to noe necessitie, limitted within no

rules of publicke Law," 1 J. Eliot, De Jure Maiestatis: or Political Treatise of Government 15, A. Grosart ed. 1882, and Baldus himself made the point in observing that no one is bound by his own statute as of necessity, see Commentary of Baldus on the statute Digna vox in Justinian's Code 1.14.4, Lectura super Codice folio 51b, Chapter De Legibus et constitutionibus, Venice ed. 1496, "nemo suo statuto ligatur necessitative".

III – Are the Statutes of the State of Michigan as most defined in Count I, II and III of the criminal complaint taken in the name of The people of the State of Michigan, the State of Michigan ex-post facto to the Constitution of the United States?

The "Statutes" M.C.L. 324.11512(1); M.S.A. 13A. 11512(1). 1324.11512, (see M.C.L. 324.11549) Count 1. , M.C.L. 324.11509(1); M.S.A. 13A.11509. 1324.1150911. (See M.C.L. 324.11549), Count 2. M.C.L. 32411512(2); M.S.A. 11502 (2) (see M.C.L. 324.115491) Count 3., for the State of Michigan are unconstitutional and lacks the Seal of the United States as law. Before laws shall take effect in the State of Michigan they shall be presented to the Article III Courts of the United States for judicial reviewed and clearance. **Lopez vs. County of Monterey, 525 U.S.266 (1999)** as laws of the Nation as condition of admission of the State of Michigan into the union of States by the Congress of the United States of

America under the equal footing clause of an act of the Congress of the United States of America. **28 U.S.C. § 1783**; **Thomas vs. Washington Gas Light Co., 448 U.S. 706 (1999).**

This rule, if not compelled by the Full Faith and Credit Clause itself, (see n. 18, infra), is surely required by **28 U.S.C. § 1738**, - - - **which provides that the Acts, records and judicial proceedings . . . [of any State]** shall have the same full faith and credit in every court within the United States . . . as they have by law or usage in the courts of [the] State . . . from which they are taken. One purpose of the Full Faith and Credit Clause is to bring an end to litigation. As the Court noted in **Riley v. New York Trust Co., 315 U.S. 343, 348-349 (1942)** perhaps the major purpose of the Full Faith and Credit Clause is to act as a nationally unifying force; **Sherrer v. Sherrer, 334 U.S. 343, 355 (1948).**

This Act by its own is in violation of Article 4, § 24, of the Constitution of Michigan for 1963 embracing two or more definitions of "Acts" within one "Act". This "Act" is directed to the sovereign state, relating to the environment and the natural resources of the state, the sovereign state. To regulate the discharge of certain substance into the environment; that is defined in the "Act" that excludes building material. See M.C.L. § 324.14703.

To declare what shall constitute a crime. See **Metheny vs. Hamby, 835 F. 2d. 672 (1987); Daigle vs. United States, 76 F.3d. 376, (C.A. 6 Michigan 1996); Randall vs. United States, 325 U.S. 148, F. 2d. 234, 325 U.S. 885 (1945)** the State of Michigan shall define the crime within these particular **"Statutes"** under **Seal of the State of Michigan; 28 U.S.C. §1738; Thomas vs. Washington Gas Light Co. 448 U.S. 261 (1980).** The enacting clause of every law shall read: "Be it enacted by the Legislature of the State of Michigan," that is challenged, and how it shall be punished is an exercise of the sovereign power of the state; **Worcester vs. Georgia, 31 U.S. 515 (1832).**

In the Constitutional Construction and Interpretation, - - Principle of existing Law - - The Best and effect of many of the provisions of the Constitution are best ascertained by bearing in mind what the law was at the time the Constitution and Amendments thereof were adopted and ratified, **Ex parte, Wilson, 1885, 5 Ct. 935, 114 U.S. 422, 29 L.Ed. 89,** not as reaching out for new guaranties but as securing such as the law recognized, **Mattox vs. U.S., 15 S. Ct. 337, 156 U.S. 243, 30 L.Ed. 409, (1805).** The requirement of full faith and credit is to be read and interpreted in the light of well established principles of justice protected by the Constitutional provisions which it was never intended to modify or override; **Bigelow**

vs. Old Diminion Copper Min., etc., Co., 32 S.Ct. 641, 225 U.S. 111, 56 L. Ed.1009, (Mass, 1912).

In general - - - The Constitution, establishing a frame of government, declaring fundamental principles, and creating a national sovereignty, is not to be interpreted with the strictness of a code of laws or of a private contract; **Fairbanks v. U.S. , 21 S.Ct. 648, 181 U.S. 287, 45 L.ed. 709, (1901).** Provisions for the Protection of Life, Liberty, and Property - - - The provisions for the protection of life, liberty, and property are to be largely and liberally construed in the favor of the Citizen; **Dorman v. State, 34 Ala. 216, 283, (1850);** A life construction should be made in favor of persons charged with a crime. **Ex parte, Lange, 85 U.S. 163 , 18 Wall, 163, 21 l.Ed. 872, (1873).**

In **Sims v. Parke Davis & Co. , E.D. Mich. 334 Sup.774, (1971),** an action for civil damages may be inferred from a criminal statute even though that statute does not expressly authorize a civil damage suit. The plaintiff must first demonstrate that he (Mr. Conely) falls within this class of persons the criminal statutes are intended to protect. To declare what shall constitute a crime, and how it shall be punished, is an exercise of the sovereign power of the state; **People vs. Hanrahan , 42 N.W. 402, (1889).**

Where is the damaged party in this case? How did Mr.

Conely endanger the health, safety, of the general welfare or moral of the People of the State of Michigan? See **People v. Deutsch, 172 N.W. 2d. 392 , 19 Mich. App. 74, (1969).**

"It is a necessary requisite that every law should show on its face the authority by which it is adopted and promulgated and that it should clearly appear that it is intended by the legislative power that enacts it that it should take effect as a law;" **People v. Dettenthaler, 77 N.W. 450, 451, 118 Mich. 595 (1898) and cases cited.**

Public Act 1994 - - - No 451 was passed after Patrick Jay Conely established an operation salvaging metals. The unusable materials and garbage collected are disposed of at a State of Michigan Licensed Landfill. It should be noted that on several occasions the **D.E.Q.** has searched several Superior Sanitation truck loads at **ONYX landfill**. See **M.C.L. § 324.11548.** See **42 U.S.C. § 6946**, Recyclable Material and Rubbish – Salvaging – means the removal of reusable materials from solid waste, also see Waste Reduction Act **M.C.L. 324.14303.**

It should be noted that this action by the State of Michigan may be in violation of the Waste Reduction Act.

Patrick Jay Conely, Superior Sanitation d/b/a/ collect household garbage; **United States v. Bestfoods, 524 U.S. 51 (1998)** and are not handlers in the "operation" of hazardous

waste or the disposal of hazardous waste; operator pursuant to **42 U.S.C. § 9607(a)(2)**. In 1980, CERCLA was enacted in response to the serious environmental and health risks posed by industrial pollution; **Exxon Corp. v. Hunt, 475 U.S. 355, 358-359 (1986).**

Fact - - - Public Act 1994 - - - No. 452 is not Law of this Nation. This "Act" lacks the judicial clearance for a three judge court of the district of the United States for the district of Columbia. Therefore Public Act 1994 - - - No 451 is not Law of this Nation and Patrick Jay Conely, a Citizen of the United States cannot be held to this Public Act 1994 - - - N. 452 of the State of Michigan; non State or Federal enclaves.

In **Thomas v. Washington Gas Light Co. 448 U.S. 261 (1980)**, the lead opinion was delivered by Mr. STEVENS,

1. United States Constitution, Art. IV, §1:

Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Title 28 U.S.C. §1738 provides, in part:

The Acts of the legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.

Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory, or Possession from which they are taken.

Fact - - - Count I - - - SOLID WASTE - - - DISPOSAL OF REFUSE AT NON-LICENSED FACILITY did dispose of refuse at a place other that a disposal area licensed under the Solid Waste Management Part; contrary to M.C.L. 324.11512 (1); M.S.A. 13A. 11512 (1), [324.115121]
MISDEMEANOR: $1,000.00 fine (see M.C.L. 324.11549)

Count II - - - SOLID WASTE - - - ESTABLISHING A DISPOSAL AREA WITHOUT A PERMIT did establish a disposal area without first obtaining a construction permit from Department of Natural Resources; contrary to M.C.L. 324.11509 (1); M.S.A. 11509 (1), [324.115091]
MISDEMEANOR: $1,000.00 fine [see M.C.L. 324.11549]

Count III - - - SOLID WASTE - OPERATING DISPOSAL AREA WITHOUT A PERMIT did conduct, manage, maintain, or operate a disposal area without having a license from the Department of Natural Resources; contrary to M.C.L. 324.11512 (2); M.S.A. 13A. 11512 (2); [324.115122]; MISDEMEANOR; $1,000.00 fine [see M.C.L. 324 11549]; lack the seal and the State of Michigan, and therefore are not in compliance with 28 U.S.C. § 1738.

The court(s) of the United States have held that a Citizen of the United States can only be held to the Laws of this Nation and the United States Constitution; **William Joe JOHNSON, Petitioner v. Harry S. AVERY, Commissioner, Department of Correction, and C. Murray**

Henderson, Warden, Tennessee State Penitentiary, Nashville, Tennessee, Respondents. Civ. No. 4170. United States District Court M.D. Tennessee, Nashville Division. Jan. 21, 1966. In this particular State of Michigan, criminal cause of action, Patrick Jay Conely a.k.a. PATRICK JAY CONELY is being held in detention and held to answer to the "Statute(s) of the Corporate State of Michigan that are not the Laws of this Nation or the United States Constitution.

Fact - - - On June 7, 2002, date of entry, the D.E.Q. the Michigan State Police and other officers, agents and/or employees of the State of Michigan entered the Private Property of Patrick Jay Conely and violated M.C.L. § 324.20135a. Access to property; action by court. [MSA §13A.20135a]. Trespass without authority is a trespass in violation of Patrick Jay Conely's Article IV, § 2, clause, Privileges and Immunities as a Citizen of the United States;

Camara vs. Municipal Court of the City and County of San Francisco 92 U.S. 523, (1967).

Theses Statutes are enforceable on persons, in the State, in this State; Such term, as defined does not include, any of the 50 union American States, but is defined as follows.

"... in this State; or in the State" means within the exterior limits of the State" States include [only] the District of Columbia, and the possessions of the United States." Title 4

U.S.C. § § 105-106; the BUCK ACT, taxation, and exemptions; subject to the jurisdiction of the United States.

Patrick Jay Conely, as a Citizen of the United States, is not a person and again the People of the State of Michigan and/or the State of Michigan has failed to show this Court that § 324.504 is the law of this state and the Law of this Nation by the Seal of the State with the judicial clearance from the district court of the United States for the district of Columbia as required by **28 U.S.C. § 1738.** See **Thomas v. Washington Gas Light Company, 448 U.S. 261, (1980).** Patrick Jay Conely is not named within the Statutes of the State of Michigan.

Petitioner further argues that the Respondents lacks the authority to take actions without substantially advanced legitimate public interest[s] and legitimate public interest[s], without a showing that the respondents acted in protecting the environment, health and safety of its citizens and regulating the quality of the community of the advance for any such legitimate public purpose; **City of Monterey v. Del Monte Dunes at Monterey , 526 U.S. 687 (1999).**

This operation of collecting and salvaging usable recyclable material at the private property commonly known as 4961 Walsh Drive, Brighton, Michigan state in the United States has been in operation before Public Act 1994 - No 451 was enacted into the Statutes for the State of Michigan. This

Public Act of 1994 is an Ex-Post- facto Statute and is not enforceable on the private property at 4961 Walsh Drive and/or upon Patrick Jay Conely without the State of Michigan showing that his personal action is a direct cause of damage to the Citizen(s) of Michigan, in the United States under the common law.

The People of The State of Michigan failed to prove that Patrick Jay Conely intended to violate the State of Michigan statutes most defined in Counts I, II and III. See **Stapleton v. Commonwealth, 123 Va. 825, 96 S.E. 801; Shiflett v. Commonwealth, 143 Va. 609, 130 S.E. 777; Jefferson v. Commonwealth, 214 Va. 432, 201 S.E.2d 749.**

The Constitution prohibits the criminal conviction of any person except upon proof of guilt beyond a reasonable doubt. **In re Winship, 397 U.S. 358.**, the Court held for the first time that the Due Process Clause of the Fourteenth Amendment protects a defendant in a criminal case against conviction "except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged."**397 U.S. at 364**. In so holding, the Court emphasized that proof beyond a reasonable doubt has traditionally been regarded as **the decisive difference between criminal culpability and civil liability. Id. at 358-362. See Davis v. United States, 160 U.S. 469; Brinegar v. United States, 338**

U.S. 160, 174; Leland v. Oregon, 343 U.S. 790; 9 J. Wigmore, Evidence § 2495, pp. 307-308 (3d ed.1940). Cf. Woodby v. INS, 385 U.S. 276, 285. The standard of proof beyond a reasonable doubt, said the Court, plays a vital role in the American scheme of criminal procedure.

The constitutional standard recognized in the Winship case was expressly phrased as one that protects an accused against a conviction except on **"proof beyond a reasonable doubt. . . ."** In subsequent cases discussing the reasonable doubt standard, we have never departed from this definition of the rule, or from **[443 U.S. 316] the Winship understanding of the central purposes it serves. See, e.g., Ivan v. v. City of New York, 407 U.S. 203, 204; Lego v. Twomey, 404 U.S. 477, 486-487; Mullaney v. Wilbur, 421 U.S. 684; Patterson v. New York, 432 U.S. 197; Cool v. United States, 409 U.S. 100, 104.** In short, Winship presupposes as an essential of the due process guaranteed by the Fourteenth Amendment that no person shall be made to suffer the onus of a criminal conviction except upon sufficient proof - defined as evidence necessary to convince a trier of fact beyond a reasonable doubt of the existence of the element of the offense. The Blockburger test.

The Winship doctrine requires more than simply a trial [443 U.S. 317] ritual. A doctrine establishing such a fundamental and substantive constitutional standard must also

require that the factfinder will rationally apply that standard to the facts in evidence. A "reasonable doubt," at a minimum, is one based upon "reason." Yet a properly instructed jury may occasionally convict even when it can be said that no rational trier of fact could find guilt beyond a reasonable doubt, and the same may be said of a trial judge sitting as a jury. In a federal trial, such an occurrence has traditionally been deemed to require reversal of the conviction. **Glasser v. United States, 315 U.S. 60, 80; Bronston v. United States, 409 U.S. 352. See also, e.g., Curley v. United States, 81 U.S.App.D.C. 389, 392-393, 160 F.2d 229, 232-233.** Under **Winship,** which established **[443 U.S. 318]** proof beyond a reasonable doubt as an essential part of the Fourteenth Amendment due process, it follows that, when such a conviction occurs in a state trial it cannot constitutionally stand.

IV Were Patrick Jay Conely's Fifth and Fourteenth Amendment Rights violated when The People of the State of Michigan, the State of Michigan failed to apprise Mr. Conely of the statutes defined in Counts I, II and III prior to filing the State of Michigan criminal complaint No. 01-5883 SM.

Patrick Jay Conely, Petitioner has an operation of recovering, salvaging and recycling of copper, brass, aluminum and steel from the collection of garbage which was established in 1980 Prior to 1980, Mr. Conely's father had conducted

operations on the property also; **City of New Orleans v. Dukes, 427 U.S. 297 (1976) at 297 also U.S. 300** ("had operated in the Vieux Carre for 20 or more years, and therefore qualified under the **"grandfather clause"**); **Adams v. Tanner, 244 U.S. 590 (1917) at 595 and the 14th Amendment.**

The liberty mentioned in the14th Amendment means not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper, necessary and essential to his carrying out a successful conclusion, the purposes above mentioned.

Petitioner further argues that the Respondents lack the authority to take actions without substantially advanced legitimate public interest[s] and legitimate public interest[s] without a showing that the respondents acted in protecting the environment, the health and safety of its citizens and regulating the quality of the community of the advance for any such legitimate public purpose; **City of Monterey v. Del Monte Dunes at Monterey, 526 U.S. 687 (1999).**

The State of Michigan failed to apprise Patrick Jay

Conely of the changes in the Statutes as defined in the criminal complaint in counts I, II and III failing to afford Mr. Conely an opportunity to present objections in a judicial court of law prior to taking criminal action; **Henderson v. United States, 517 U.S. 654 (1996); also Mullane v. Centeral Hanover Bank & Trust Co., 339 U.S. 306 (1952) and Blackner v. United States, 284 U.S. 421 (1923).** See Fifth Amendment to the Constitution of the United States and the Bill of Rights and the Articles as the laws of this Nation.

REASONS FOR GRANTING

Patrick Jay Conely, Citizen & Petitioner, respectfully requests the justices of this Honorable court grant this writ of Certiorari to vindicate the Michigan conviction, in the name of The People of the State of Michigan, The State of Michigan.

Petitioner raised several violations of his liberties and Constitutional Rights, Privileges, Immunities and personal Liberties that are questions of law and the merits of the petitioners claims to be heard by this court of the United States.

Petitioner has throughout the proceeding in the courts of the State of Michigan has claimed his innocence. On appeal the Circuit Court for the County of Livingston reversed the conviction in the State of Michigan 53rd District Court.

During the proceeding in the State of Michigan 53rd District Court the People failed to prove that Patrick Jay Conely

intended to violate the State of Michigan Statutes most defined in Counts I, II and III.

On appeal to the State of Michigan Court of Appeals and under objections of the petitioner/ State defendant, the State of Michigan Court of Appeals reinstates the conviction of the 53rd District Court.

State defendant-petitioner appealed for reconsideration and the State of Michigan Court of Appeals and the State of Michigan Court of Appeals refused to reverse its decision.

Petitioner, Patrick Jay Conely, appealed to the State of Michigan Supreme Court that was rejected and an appeal for reconsideration was filed. The court saying "On order of the Court, the motion for reconsideration of this Court's order of August 30, 2005 is considered, and it is DENIED, because it does not appear that the order was entered erroneously."

The order of the Court in the opinion of the petitioner, the State of Michigan/Michigan Supreme Court has failed to settle the controversy of whether the State of Michigan has control of the petitioner private property and Patrick Jay Conely to enforcement of the statutes most defined in Count I, II and III of the State of Michigan's criminal complaint.

These statutes were in action in 1994 ex-post facto to the operations of the petitioner and therefore the petitioner should have been "grand fathered in the grandfather clause."

Petitioner requests this court consider whether the action by the People of the State of Michigan, the State of Michigan violated Petitioner's Fifth and Fourteenth Amendment rights by not apprising the petitioner, of the changes and the application of the State of Michigan statutes most defined in Counts I, II and III affording petitioner an opportunity to present objection to and be heard before a neutral judge.

Petitioner, further argues that these State of Michigan Statutes as most defined in Counts I, II, and III of The People of the State of Michigan criminal complaint only has authority within State of Michigan enclaves see the Buck Act 4 U.S.C. §108; see 4 U.S.C. §105 (a)(4); and "Acts or Omission"Double Jeopardy Clause, 5th Amendment without establishing a Constitutional and Statutory violation for exterritorial jurisdiction, in Michigan in the United States.

CONCLUSION

Certiorari jurisdiction is warranted to correct theses errors, clarify the law and purge an innocent Citizen of the wrongful application of the State of Michigan statutes on non enclaves of the State of Michigan without Boundaries, non federal enclaves, possessions and territories, in Michigan.

RELIEF REQUESTED

Wherefore, Patrick Jay Conely, petitioner prays that

this court of last result will hear his petition for writ of certiorari and pleads the Constitution of the United States in Bar of the action, notwithstanding the court and the justices of the United States Supreme Court gives judgment against him in the particular matters now before the court of the Union of the United States saying "the lawful demand of one's rights" jus prosequendi in judicio quod alicui debetur.

Petitioner further pleads for relief pursuant to **41 Cong.Rec. 2752.** "The bill was intended to create "the opportunity to settle important questions of law," its "great purpose" being "to secure the ultimate decision of the court of final resort on questions of law." Article III § 2 jurisdiction, cause of action under the Bill of Rights, Article I section 8, the third, sixth, seventh and the twelfth, the Constitution of the United States, Fourth, Fifth and Fourteenth Amendment as the laws of the United States; [p]ursant to the affirmative powers of congress. Questions of State Powers in non State enclaves.

The State of Michigan in error, failed to charge Patrick Jay Conely, Citizen under the common law(s) of Michigan, independent of any statutory provision on the subject, are in all cases in the discretion of the court, for the furtherance of justice.

Wherefore, Patrick Jay Conely, Citizen, Petitioner respectfully requests the Honorable Justices of this Supreme

Court of the United States grant this petition for writ of certiorari.

Dated: 4-21-06

Patrick Jay Conely

Patrick Jay Conely
c/o 4961 Walsh Road
P.O. Box 361
Brighton, Michigan [48116]
(810) 227-1298

BEFORE ME, the undersigned authority, Patrick Jay Conely, known by me (or satisfactorily proven) whose full appellation is subscribed by the foregoing instrument, personally appeared and acknowledged by me that he executed the same as his free act and deed for the purpose and considerations herein expressed and the capacity stated and the statements contained herein are true and correct by the best of his information, knowledge, and belief.

Subscribed and affirmed before me this 21 day of April, 2006.

IN WITNESS WHEREOF, I have set my hand and official seal:

Notary Public

January 20, 2012
My Commission Expire

TERRY YENNIOR
Notary Public - Michigan
Livingston County
My Commission Expires Jan 20, 2012
Acting in the County of Livingston

Appendix - A -
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Order

Michigan Supreme Court
Lansing, Michigan

January 30, 2006

128714
(43)

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

PATRICK JAY CONELY,
Defendant-Appellant.

Clifford W. Taylor
Chief Justice
Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman
Justices

SC: 128714
COA: 250576
Livingston CC: 02-013106-AR
53rdDC: 015883-SM

On order of the Court, the motion for reconsideration of this Court's order of August 30, 2005 is considered, and it so DENIED, because it does not appear that the order was entered erroneously.

t0823

I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

January 30 , 2006

Corbin R. Davis
Clerk

10123

APPENDIX -B -

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Order

Michigan Supreme Court
Lansing, Michigan

August 30, 2005

128714
PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v
PATRICK JAY CONELY,
Defendant-Appellant.

Clifford W. Taylor
Chief Justice
Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman
Justices

SC: 128714
COA: 250576
Livingston CC: 02-013106-AR

53rd DC: 015883-SM

On order of the Court, the application for leave to appeal the February 8, 2005 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

t0823

I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

August 30 , 2005

Corbin R. Davis
Clerk

APPENDIX - C -
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STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

PATRICK JAY CONELY,

Defendant-Appellee.

UNPUBLISHED
February 8, 2005

No. 250576
Livingston Circuit Court
LC No. 02-013106-AR

Before: Hoekstra, P.J., and Cavanagh and Borrello, JJ.
MEMORANDUM.

Plaintiff appeals by leave granted the decision of the circuit court reversing defendant's district court convictions for violating the Solid Waste Management Act, MCL 324.11501 *el seq.*

We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On November 8, 2001, plaintiff filed a three-count complaint in 53rd District Court alleging that defendant disposed of waste in an area that was not licensed, he established a disposal area without obtaining a construction permit from the DNR, and he operated a disposal area without a license. After a bench trial, the district court found defendant guilty on all three counts. On appeal, the circuit court reversed the convictions, finding that there was no evidence presented concerning conditions on November 8, 2001, thus the evidence was insufficient to support the convictions.

In determining whether sufficient evidence has been presented to sustain a conviction, a reviewing court must view the evidence in a light most favorable to the prosecution, and determine whether any rational finder of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe,* 440 Mich 508, 515; 489 NW2d 748 (1992). The standard of review is deferential: a reviewing court is required to draw all reasonable inferences and make credibility choices in support of the jury verdict. *People v Nowack,* 462 Mich 392, 400; 614 NW2d 78 (2000).

There was sufficient evidence to show that the violations existed. DEQ employees testified that they first went to the site on July 9, 2001, in response to a complaint forwarded by a local unit of government. They observed piles of solid waste in the center of the site, and salvage materials on the west and south sides of the site. When employees returned to the property in May 2002 to take environmental samples, the piles of solid waste were in similar locations and of similar size and some of the same material was in the same piles as before.

Defendant asserts that time is an element of the offense, and that plaintiff failed to present sufficient proof to establish that element, i.e., that the violations existed on the date

charged. However, a variance between the time charged and the proofs is not fatal unless time is of the essence. *People v Taylor,* 185 Mich 1, 7-8; 460 NW2d 582 (1990). There is no indication that time is of the essence, or a material element of the offenses charged: violations of the Solid Waste Management Act. *Id.* Plaintiff presented evidence that the violations existed at the time of the first inspection, and that those violations continued. There was no evidence that the violations ever abated, thus defendant was not prejudiced by a variation in time between the charge and the proofs. The circuit court therefore erred in reversing defendant's convictions.

Reversed and remanded for reinstatement of the convictions. We do not retain jurisdiction.

/s/ Joel P. Hoekstra
/s/ Mark J. Cavanagh
/s/ Stephen L. Borrello

Appendix - C -
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Court of Appeals, State of Michigan

ORDER

PEOPLE OF MI v PATRICK JAY CONELY

Docket No. 250576

LC No. 02-013106-AR

Joel P. Hoekstra
Presiding Judge
Mark J. Cavanagh
Stephen L. Borrello
Judges

The Court orders that the motion for reconsideration is DENIED.

The Court further orders that the motion for miscellaneous relief pursuant to MCR 7.216 is DENIED.

Presiding Judge

A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

MAR 2 3 2005 Sandra Schultz Mengel

Date Chief Clerk

APPENDIX -D -
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STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF LIVINGSTON

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff,

v Case. No. 02-13106 AR

PATRICK JAY CONELY,
Defendant.

TRUE COPY
DANIEL A. BURRESS
44th CIRCUIT COURT

OPINION and ORDER

Defendant/Appellant Conely was charged in a three count Complaint with violating provisions of the Solid Waste Management Act. Count I. alleged that Conely did

dispose of refuse at a place other than a disposal area licensed under the Solid Waste Management Act contrary to MCL 324.11512(1). Count II alleged that Conely established a disposal area without first obtaining a construction permit from the Department of Environmental Quality, contrary TO MCL 324,11509(1). Count III alleged that Conely did conduct, manage, maintain, or operate a disposal area without having- a license from the Department of EnvironmentalQuality contrary to MCL 324.11512(2). The complaint alleged that all three of these violations occurred on November 8, 2001.

Conely waived his right to a jury trial and a bench trial was held on June 25, 2002.Written closing arguments by the parties were presented to the trial court on or before July 16, 2002. The trial court issued an opinion and order finding Conely guilty on all three counts. Conely was sentenced, to fines of five hundred dollars ($500.00) on

each count.

Conely has appealed that conviction and sentence as of right to this Court.

After hearing oral argument on the appeal of this matter on May 28,2003, this Court directed the parties to submit briefs limited to the date of the offense and venue only.

The prosecution argues that the trial court was aware of Defendant's contention that there was no proof regarding the offense date because defense counsel argued it in his written closing argument to the trial court. In support of the prosecution's position. Appellee cites *People v Less,* 197 Mich App 131; 494 NW2d 797 (1992) which states:

> Factual findings are sufficient as long as it appears that the trial court was aware of the issues in the case and correctly applied the law. The court need not make specific findings of fact regarding each element of the crime. A court's failure to find the facts does not require remand where it is manifest that the court was aware of the factual issue, that it resolved the issue, and that further explication would not facilitate appellate review. (Internal

citations omitted.) *Id* 134, 135.

The People also cite *People v Rand,* 397 Mich 638; 247 NW2d 508 (1976), which states that the a written verdict is not void for uncertainty if the Jury's intent can be deduced by reference to the pleadings, court's charge and the entire record.

Defendant contends that the opinion and order of the trial court does not disclose any finding of fact as to the date of the alleged offenses or that the alleged offenses were committed, in Livingston County. Defendant correctly notes that there was no evidence-presented at trial as to Defendant's activities or the condition of his property on or about November 8, 2001, the date alleged in the Complaint.

Defendant further notes that venue is a necessary portion of the prosecution's case, People v Swift, 188 Mich App 619,470 NW2d 491 (1991); and that venue must be proven beyond a reasonable doubt. *People v Plautz,* 28 Mich *App*

621; 184 NW2d 761 (1970).

MCR 6.403 provides:

When trial by jury has been waived., the court with jurisdiction must proceed with the trial. The court must find the facts specifically, state separately its conclusions of law, and direct entry of the appropriate judgment. The court must state its findings and conclusions of the record or in a written opinion made a part of the record.

When reviewing a challenge to the sufficiency of the evidence in a bench trial, the evidence presented is reviewed in a light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Petrella,* 424 Mich 221,268- 270,275; 380 NW2d 11 (1985); *People v Vaughn,* 186 Mich App 376, 379-380; 465 NW2d 365 (1990).

The trial court must make findings of fact and state separately its conclusions of law, MCR 6.403. Findings are sufficient if it appears that the trial court was aware of the issues in the case and correctly applied the law. *People* v *Smith.* 211 Mich App 233, 235; 535 NW2d 248 (1995). The trial court's findings of fact are reviewed for clear error. MCR 2.613(C); *People v Hermiz.* 235 Mich App 248,255; 597 NW2d 21 S (1999), affd 462 Mich.7]; 611 NW2d 783 (2000).

The trail court need not make specific findings as regards each element of the crime to comply with the dictates of MCR 6.403; *Legg, supra.* A trial court's **factual** findings are sufficient as long as it appears that the court was aware of the factual issues and correctly applied the law. *Id.* at 134.

"A finding is considered to be clearly erroneous if, after a review of the entire record, the appellate court is left

with a definite and firm conviction that a mistake has been made." People v Gistover, 189 Mich App 44,46; 472 NW2d 27 (1991). The trier of fact may make reasonable inferences from evidence in the record, but may not make inferences completely unsupported by any direct or circumstantial evidence. *People v Vaughn*, 186 Mich App 376, 379-380; 465 NW2d 365 (1990).

There was no evidence presented at trial relating to November 8, 2001, the date alleged in the Complaint. Nor is there a finding as to this date by the trial court. The evidence, viewed in a light most favorable to the prosecution, does not support a conviction for acts occurring November 8, 2001.

Accordingly, the decision of the trial court is REVERSED.

THIS ORDER RESOLVES THE LAST PENDING CLAIM AND CLOSES THE CASE.

Aug. 06, 2003
Date

Daniel A. Burress
Circuit Judge

APPENDIX -E-

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STATE OF MICHIGAN53 B JUDICIAL DISTRICT	COMPLAINT MISDEMEANOR	CASE NO. 01-5883 SM
ORI ,.,.,.,470025J	Court address 224 North First St., Brighton, Mi. 48116	
THE PEOPLE OF The State of Michigan v PATRICK JAY CONELY 4911 LANGDON BRIGHTON, MI. 48116		Victim or complainant DET/SGT TOM ARYERS Complaining witness DET/SGT TOM ARYERS
		Date On or about 11/08/2001

City/Twn./Village	County of Mi.	Defendant CTN	Defendant D.O.B.
BRIGHTON TOWNSHIP	Livingston	47-010003458-01	09/20/1954

Police agency report no.	Charges	Maximum penalty
120-147-2001	See Below	See Below

Witnesses		Defendant D.L.N.
DET/SGT TOM AYERS	BILL YOCUM	C 540 676 379 729
JENNIFER PLANCK	STEVE LYONS	

STATE OF MICHIGAN, COUNTY of Livingston

The complaining wrtness says that on the date and at the location described the defendant, contrary to law,

The complaining witness says that on the date and at the location described the defendant, contrary to law,

Count 1 SOLID WASTE - DISPOSAL OF REFUSE AT NON-LICENSED FACILITY did dispose of refuse at a place other than a disposal area licensed under the Solid Waste Management Part; contrary to MCL 324.11512(1); MSA 13A.11512(1); [324.115121] MISDEMEANOR: $1,000.00 fine (see MCL 324.11549)

Count 2 SOLID WASTE - ESTABLISHING A DISPOSAL AREA WITHOUT A PERMIT did establish a disposal area without first obtaining

Count 3 SOLID WASTE - OPERATING DISPOSAL AREA WITHOUT A LICENSE did conduct, manage, maintain, or operate a disposal area without having a license from the Department of Natural Resources; contrary to MCL 324.11509(1); MSA 13A.11509(1) [324.115122] MISDEMEANOR: $1,000.00 fine (see MCL 324.11549)

The complaining witness asks that defendant be apprehended and dealt with according to law.

(Peace Officers only) I declare that the statements above are true to the best of my information, knowledge, and belief.

_____ 7f^ Ulfl^-

^ _____

Warrant authorize

DC 225 (3/01) COMPLAINT, MISDEMEANOR

COURT

APPENDIX - E -
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STATE OF MICHIGAN
53rd DISTRICT COURT

SEARCH WARRANT

TO THE SHERIFF OR ANY PEACE OFFICER:

D/Sgt. Tom Ayers has sworn to the attached Affidavit regarding the following:

1. The person, place or thing to be search is described as and is located at

The entire premises commonly known Superior Sanitation. 4961 Walsh Rd., Brighton Township, Livingston County, Michigan, any and all structures, buildings, trailers, motor homes mobile homes, buses, boats or other vehicles therein. The property is located on the east side of Walsh Rd The property contains a one story building, tan in color with the visible address numbers 4961 on the building, next to the door. Included to be searched are the grounds, vehicles, wells, drains drain sumps, containers or tanks on or below the surface which could reasonably render a physical sample related to waste production, handling, management, storage or disposal; and including any location, equipment, cabinet, storage device, system or computer, whether free standing or networked, within the buildings where operation or production records may be kept;

2. The property to be searched for and seized, if found, is specifically described as:

a. Any files, records, both printed and electronic, notes, logs, memoranda, correspondence, bills, invoices, manifests, maintenance records, laboratory data or any other records, in any format, dealing with the production, handling, processing, transportation, storage and disposal of solid waste, liquid industrial waste, hazardous substances, hazardous waste or scrap tires.

b. Physical samples of possible hazardous substances, in and on the property, located at 4961 Walsh Rd. Physical samples may include, but are not limited to samples from land, water, air, buildings, vehicles, equipment, containers, drums or tanks on or below the surface of the ground, subsurface core samples and subsurface water samples.

c. Physical samples of waste, in and on the property, located at 4961 Walsh Rd. Physical samples may include, but are not limited to samples from land, water, air, buildings, vehicles, equipment, containers, drums or tanks on or below the surface of the ground, subsurface core samples and subsurface water samples.

d. In obtaining the physical samples as described in b & c above, it may be necessary to use heavy drilling equipment which, depending on the weather, may result in some land disturbance.

«. Records showing contractual or other business relationships, dealing with the production. handling, processing, transportation, storage and or disposal of solid waste, hazardous waste or liquid industrial waste.

f. Records showing ownership, management or control of the property of 4961 Walsh Rd.

g. Records showing ownership, management or control of Superior Sanitation operating at 4961 Walsh Rd.

IN THE NAME OF THE PEOPLE OF THE STATE OF MICHIGAN: I have found that probable cause exists and you are commanded to make the search and seize the described property. Leave a copy of this warrant with affidavit attached and a tabulation (a written inventory) of all property taken with the person from whom the property was taken or at the premises. You are further commanded to promptly return this warrant and tabulation to the Court.

Issued:

APPENDIX - E-
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STATE OF MICHIGAN
IN THE 53RD DISTRICT COURT

PEOPLE OF THE STATE OF MICHIGAN.
Plaintiff;
v. File No. 01-S883-SM
PATRICK JAY CONELY,
HON. FRANK R-DEL VERO
Defendant.

James W,MetzII(P58121)
Assistant Prosecuting Attorney
210 S. Highlander Way
Howell, MI 48843
(517)546-18590

Douglas D. Cameron (P26818)
• Attorney for the Defendant
317 W. Main Street
Brighton, MI 48116
(810)229-6167

OPINION AND ORDER

The Defendant, Patrick Jay Conely, is charged with three counts of violating Michigan's solid waste statute, including MCL 324.11512 (1), 324.11509(1) and

324.11512(2). The matter was before the Court on June 25, 2002 for a bench trial. The People and the Defendant submitted written closing arguments and the Court took the matter under advisement to review these arguments and the applicable law.

At trial, the People presented evidence of the condition of the Defendant's land and of the waste piles which are present on Defendant's land. The People also presented evidence that the Defendant's land was not part of the County Solid Waste Management Plan and that if the Defendant's land was a transfer facility, it would have to be part of the County Plan. Testimony also showed that the land in question was in fact owned by the Defendant and the Defendant did not have

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CLERK-QF DISTRICT COURT #53

a permit or license to establish or operate a disposal area. The Defendant argued that his land fits into the exception in MCL 324.11529 as a solid waste transfer facility and therefore, is exempt from the licensing and permit requirements of MCL 324.11509(1) and 324.11512(2).

The first issue which must be determined is if the items on the Defendant's land constitute solid waste as defined by the Natural Resources and Environmental Protection Act. Reviewing MCL 11506(1), which gives the definition of solid waste, it would appear the waste piles on the Defendant's land do constitute solid waste. It appears that most of the items would be considered rubbish and they do not fit into any of the exceptions listed in MCL 324.11506.

Count One of the Complaint charges the Defendant with disposing of solid waste at a non-licensed facility in violation of MCL 324.11512(1). The evidence presented by the People showed that the Defendant had solid waste disposed of on his premises. The Defendant is also not a licensed disposal area. The People's exhibits and testimony from

witnesses prove beyond a reasonable doubt that the Defendant was disposing of solid waste at an unlicensed disposal area and therefore is guilty of violating MCL 324.11512(1).

Count Two and Three of the Complaint charge the Defendant with violating MCL 324.11509(1) and 324.11512(2). Both of these sections reference the exemption in MCL 324.11529 for solid waste transfer facilities. Accordingly, this Court must determine if the Defendant's land can be considered a solid waste transfer facility. The definition of a solid waste transfer facility, as given in MCL 324.11506(5), is "a tract of land ... that is used or intended for use in the rehandling or storage of solid waste incidental to the transportation of the solid waste, but not located at the site of generation or the site of disposal of the solid waste." *Id.* If the Defendant's land is considered a solid waste transfer facility, it would appear that he would be entitled to the exemption in MCL 324.11529 which stated that solid waste transfer facilities are not subject to construction permit and operating license requirements if they are within certain

requirements listed in the statute.

However, it does not appear that the Defendant's land fits the definition of a solid waste transfer facility. First, the Defendant's land does not meet the definition of a solid waste transfer facility given in the statute. The Defendant did not show that the waste on his land was being stored or rehandled incidental to transportation, as is required by the definition in the statute. People's witness, Tom Ayres, testified that he observed large waste piles that appeared to have been on the Defendant's land for long periods of time. He also stated that he observed the waste piles which did not significantly change over the period of time in which he made visits to the Defendant's land. Furthermore, the People's witness Jennifer Melcher, testified that to be a solid waste transfer facility, the land must be part of the County plan, which the Defendant's land is not. Ms. Melcher testified that she told the Defendant what he would need to do to be in compliance with the County plan, but the Defendant chose not to take these steps.

Because the Defendant's land does not fit the exception in MCL 324.11529, and because the evidence showed the Defendant did not have a construction permit, the Defendant is guilty of Count Two, establishing a disposal area without a construction permit, in violation of MCL 324.11509(1). Additionally, because the Defendant did not have a license to operate his disposal area, he is guilty of Count Three, operating a disposal area without a license, in violation of 324.11512(2).

Therefore, the Court finds the Defendant guilty of the three counts in the Complaint. The Court will enter a judgment of conviction and order the Defendant to the 53rd District Court Probation Department on August 29, 2002 at 8:30 a.m. with sentencing to be conducted on September 16, 2002 at 2:00 p.m.

So Ordered.

Dated: 8-14-02

Hon. Frank R. Del Vero
District Judge
53rd Judicial District Court
204 S. Highlander Way
Howell, Michigan 48843
(517) 548-1000

ADDENDUM - A -
Essential Elements Rule

ARTICLE IV, § 2, cl 1

Section 2, Clause 1. Privileges and immunities of citizens. The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

119 Wn.2d 623, P.2d 212, AUBURN v. BROOKE
[Essential Elements Rule]

[Nos. 57867-2, 57972-5. En Banc. September 10, 1992.]

AUBURN v. BROOKE

THE CITY OF AUBURN, Respondent, v. JAMES A. BROOKE, Petitioner.
THE CITY OF SEATTLE, Respondent, v. CASPER SCOTT WANDLER, Petitioner.

[1] **Indictment and Information — Sufficiency — Notice of Charge — Essential Elements. The Sixth Amendment and Const. art. 1, §§ 22 (amend. 10) require that all the essential elements of a crime, both statutory and nonstatutory, be included in a charging document in order to afford the accused notice of the nature and cause of the accusation.**

[2] Indictment and Information — Sufficiency — Notice of Charge — Citation — In General. The constitutional requirement that a charging document set forth all the essential elements of the crime charged applies to all types of crimes (felonies, gross misdemeanors, and misdemeanors) and to all charging documents, including citations used as final charging documents.

[3] Indictment and Information — Purpose — In General. The primary function of charging documents is to give the accused notice of both the elements of the crime charged and the conduct which allegedly constituted the crime so that the accused can prepare a defense.

[4] Courts — Rules of Court — Validity — Conflict With Constitutional Rights. Court rules cannot diminish parties' constitutional rights.

[5] Indictment and Information — Citation — Amendment — Prejudice — In General. A criminal citation may be amended if the defendant is not prejudiced thereby.

[6] Indictment and Information — Sufficiency — Notice of Charge — Resort to Code. Criminal defendants should not have the burden of locating the code containing the crime of which they are charged and determining the elements of the crime from the proper code section.

[7] Indictment and Information — Sufficiency — Review — Failure To Raise Before Verdict — Standard of Review. When a criminal defendant first raises a challenge to a charging document after return of the verdict, the court will determine the validity of the document by determining whether the necessary facts appear in any form, or by fair construction can be found, in the document and, if so, whether the defendant can show actual prejudice by the inartful language which caused a lack of notice.

[8] Indictment and Information — Sufficiency — Citation — Name and Numerical Code Section. A misdemeanor or gross misdemeanor citation used as a final charging document does not satisfy the constitutional requirement that a charging document set forth all the essential elements of the crime

charged by stating the name of the crime and its numerical code section unless such an abbreviated form constitutes a complete statement of the essential elements of the crime.

Nature of Action: Defendant Brooke was charged with trespass and disorderly conduct. Defendant Wandler was charged with driving while intoxicated and hit and run of an attended vehicle in violation of a municipal ordinance. The charging documents for both defendants recited numerical code sections and the names of the crimes.

District Court: After the trespass charge against defendant Brooke was dismissed and he pleaded guilty to disorderly conduct, the King County District Court, Aukeen Division, Nos. 12851 and 122094, Darrell E. Phillipson, J., on June 30, 1988, denied defendant Brooke's motion to withdraw his guilty plea.

Municipal Court: The Seattle Municipal Court, No. 87-035-0030, Norma Smith Huggins, J., on September 24, 1987, entered a judgment on a verdict finding defendant Wandler guilty of hit and run of an attended vehicle and not guilty of driving while intoxicated.

Superior Court: The Superior Court for King County, No. 88-1-03568-3, Faith Enyeart, J., on December 15, 1988, affirmed the denial of defendant Brooke's motion to withdraw his guilty plea. The Superior Court for King County, No. 87-1-04076-0, John W. Riley, J., on August 8, 1988, affirmed the judgment of guilty against defendant Wandler.

Court of Appeals: In the Brooke case, the court at 60 Wn. App. 87 affirmed the decision of the Superior Court and the judgment, holding that the citation was a constitutionally adequate charging document. In the Wandler case, the court at 60 Wn. App. 309 affirmed the decision of the Superior Court

and the judgment, holding that the municipal ordinance did not conflict with state law and that the charging document was a citation and was constitutional.

Supreme Court: Holding that the charging documents violated the essential elements rule, the court reverses the decisions of the Court of Appeals and the judgments and dismisses the charges.

Suzanne Lee Elliott of Washington Appellate Defender Association, for petitioner Brooke.

C. Wesley Richards, Elaine Winters, and Jeffrey E. Ellis of Seattle-King County Public Defender Association, for petitioner Wandler.

Stephen R. Shelton, City Attorney, and Judith C. Ausman, Assistant, for respondent Auburn.

Mark H. Sidran, City Attorney, and Margaret M. Boyle, Assistant, for respondent Seattle.

Nancy L. Talner on behalf of Washington Association of Criminal Defense Lawyers, amicus curiae for petitioners.

ANDERSEN, J. —

FACTS OF CASE

These two consolidated cases involve the constitutional requirements for misdemeanor and gross misdemeanor citations used as final charging documents.

AUBURN V. BROOKE

On March 18, 1987, the City of Auburn charged James A.

Brooke by citation with disorderly conduct and trespass. The citation was issued by a police officer at the scene of the alleged crimes. The trespass charge was ultimately dismissed and is not in issue. The citation described the disorderly conduct charge simply as follows:

"9.40.010(A)(2) Disorderly Conduct."

On April 21, 1987, Brooke pleaded guilty to this charge and was sentenced to 90 days in jail (60 days suspended) and fined $500 ($300 suspended).

Brooke subsequently moved to set aside his guilty plea on grounds not relevant here. The Superior Court refused to set the plea aside. Brooke sought review in the Court of Appeals arguing for the first time that the disorderly conduct citation, also used as the final charging document, was constitutionally defective because it failed to include all of the essential elements of the crime charged. The Court of Appeals granted review on the sole issue of whether the charging document was sufficient.

The Court of Appeals concluded that the citation was a constitutionally adequate charging document and affirmed Brooke's conviction. Auburn v. Brooke, 60 Wn. App. 87, 803 P.2d 1325 (1991). We accepted review and consolidated the Brooke case with Seattle v. Wandler, 60 Wn. App. 309, 803 P.2d 833, review granted, 117 Wn.2d 1008 (1991).

SEATTLE V. WANDLER

On February 3, 1987, Casper Scott Wandler was charged with two violations of the Seattle Municipal Code. The citation was signed by the two investigating police officers and described the offenses as follows:

"11.56.420 Hit/Run; Attended" and "11.56.020(B) DWI".

Wandler did not sign the citation; in place of his signature appears the word "refused". Wandler was booked into jail following his refusal to sign the citation. The parties have stipulated that some initials appearing on the citation (which was the only charging document used) represent the signature of an assistant city attorney. At his municipal court trial, a jury found Wandler guilty of hit and run driving, and not guilty of driving while intoxicated.

Wandler appealed the hit and run driving conviction to the Superior Court on several grounds not relevant here and the Superior Court affirmed the conviction. The Court of Appeals granted review on the issue of the validity of the Seattle ordinance and also on the issue of the constitutional sufficiency of the citation also used as the final charging document. Wandler first raised the issue of the constitutionality of the charging document in the Court of Appeals. That court affirmed the conviction holding the Seattle ordinance valid and, relying on the Brooke decision, held that the citation was a constitutionally adequate final charging document. Seattle v. Wandler, 60 Wn. App. 309, 803 P.2d 833, review granted, 117 Wn.2d 1008 (1991).

We accepted review of Wandler on the sole issue of the sufficiency of the citation as the charging document.

These consolidated cases present a single issue.

ISSUE

Does a misdemeanor or gross misdemeanor citation used as the final charging document in a criminal prosecution satisfy the "essential elements" rule if it states only a numerical code

section and the name of a criminal offense?

DECISION

CONCLUSION. The essential elements rule applies to all charging documents, including citations used as final charging documents; the recitation of no more than a numerical code section and the title of an offense does not satisfy that rule unless such abbreviated form contains all essential elements of the crime(s) charged.

[1, 2] An accused must be informed of the criminal charge he or she is to meet at trial and cannot be tried for an offense which has not been charged. ««1»»

State v. Irizarry, 111 Wn.2d 591, 592, 763 P.2d 432 (1988).
It has long been settled law in this state that all essential statutory

State v. Kjorsvik, 117 Wn.2d 93, 97, 812 P.2d 86 (1991) **recently held that nonstatutory essential elements must also be included in a charging document.**

elements of a crime must be included in the charging document in order to afford notice to an accused of the nature and cause of an accusation against the accused.

Kjorsvik, 117 Wn.2d at 97; State v. Leach, 113 Wn.2d 679, 688, 782 P.2d 552 (1989) (citing Leonard v. Territory, 2 Wash. Terr. 381, 392, 7 P. 872 (1885)); State v. Holt, 104 Wn.2d 315, 704 P.2d 1189 (1985).

This rule of law is based on Const. art. 1, §§ 22 (amend. 10) and on the Sixth Amendment; it is generally referred to as the essential elements rule. Many of the cases in this court

which have applied the essential elements rule were misdemeanor and gross misdemeanor prosecutions. ««4»»

See, e.g., State v. Carey, 4 Wash. 424, 30 P. 729 (1892); State v. Heath, 57 Wash. 246, 106 P. 756 (1910); Seattle v. Jordan, 134 Wash. 30, 235 P. 6 (1925); Seattle v. Proctor, 183 Wash. 299, 48 P.2d 241 (1935); Seattle v. Morrow, 45 Wn.2d 27, 273 P.2d 238 (1954); State v. Moser, 41 Wn.2d 29, 246 P.2d 1101 (1952).

In the fairly recent case of State v. Leach, 113 Wn.2d 679, 782 P.2d 552 (1989), we addressed the issue of whether a charging document, involving a misdemeanor offense filed in a court of limited jurisdiction, must state all the statutory elements of the alleged crime in order to satisfy due process. Our unanimous opinion in Leach stated:

In holding that a charging document which omits a statutory element of the crime charged violates a defendant's constitutional rights, the court in [State v. Holt, 104 Wn.2d 315, 704 P.2d 1189 (1985)] did not distinguish between misdemeanors and felonies, nor between complaints and citations. In applying the Holt rule, there is no logical reason to distinguish between complaints and citations or felonies and misdemeanors. If a misdemeanor citation or complaint omits a statutory element of the charged offense, the document is constitutionally defective for failure to state an offense and is subject to dismissal.

Leach, 113 Wn.2d at 687. Leach also reiterated that "[a] defendant's due process right to notice of the offense charged does not depend upon whether the charging document is a complaint or a citation and notice." ««5»»

Leach, 113 Wn.2d at 694.

Relying on Leach, the respondent cities argue that while

misdemeanor complaints have to satisfy the essential elements rule, misdemeanor and gross misdemeanor citations ««6»»

A citation may be issued to a defendant at the scene of an offense by a police officer and is deemed to be a complaint when certain requirements are met. CrRLJ 2.1(b)(1), (6); former JCrR 2.01(b)(4).

do not have to state the essential elements of the crime charged. This appears to be a misunderstanding of a distinction drawn in Leach. Leach, 113 Wn.2d at 697-98 states as follows:

Although the constitutional requirement for adequate notice is the same whether that notice is given by complaint or by citation and notice, there is a logical basis for reasonably distinguishing between misdemeanor defendants issued citations and those served with complaints. Complaints must be more detailed since they are issued by a prosecutor who was not present at the scene of the crime. Defining the crime with more specificity in a complaint assists a defendant in determining the particular incident to which the complaint refers. Citations, however, are generally issued by law enforcement officers who have personal contact with defendants at the scene. Defendants charged by citation are necessarily aware of the particular incidents for which officers are charging them. They presumably know the facts underlying their charges. Further, the citation charging procedure permits officers to initiate prosecutions without unjustifiable expense and delay. In addition, the procedure under CrRLJ 2.1(b) facilitates an officer's ability to charge defendants at the scene and then to release those persons for whom jailing is unnecessary. Differing procedures and requirements for charging by complaint and by citation and notice do not violate due process and equal protection rights.

(Footnotes and citations omitted. Some italics ours.)

The cities conclude from this that the elements of the crime need not be stated in a citation even when it is used as the final charging document in a criminal prosecution. If we accepted this contention, the effect would be that one defendant charged by complaint would be afforded a statement of the essential elements of the crime charged while another defendant charged with the identical crime by citation used as a final charging document would not have to be given a statement of the essential elements of the crime charged. Leach does not lead to such an anomalous result.

[3] To understand the distinction in Leach, it is helpful to look to the purpose and function of charging documents. The primary purpose is to give notice to an accused so a defense can be prepared.

Kjorsvik, 117 Wn.2d at 101.

There are two aspects of this notice function involved in a charging document: (1) the description (elements) of the crime charged; and (2) a description of the specific conduct of the defendant which allegedly constituted that crime. As we recently made clear in Kjorsvik, ««8»»

Kjorsvik, 117 Wn.2d at 98.

the "core holding of Leach requires that the defendant be apprised of the elements of the crime charged and the conduct of the defendant which is alleged to have constituted that crime." Leach noted that often charging documents are written by alleging specific facts which support each element of the crime charged.

Leach, 113 Wn.2d at 688.

Although Leach stated that the facts need not be as detailed in

a citation because it is issued at the scene of the alleged crime, it did not say that a citation need not set out the essential elements of the crime charged. In fact, Leach specifically held that a citation describing an offense as DWI (the well known acronym for Driving While Intoxicated) was sufficient because it was "a complete statement of the statutory elements constituting the offense charged".

Leach, 113 Wn.2d at 695.

Any misconception in this regard engendered by Leach should have been put to rest by Seattle v. Hein, 115 Wn.2d 555, 799 P.2d 734 (1990).

In Hein, the defendant was convicted of violating Seattle Municipal Code (S.M.C.) 11.56.020(B) (being in actual physical control of a vehicle while intoxicated). The Superior Court reversed the conviction on the ground that the citation, also used as the final charging document, described the offense only by municipal code section number and the words "physical control". The City sought review in the Court of Appeals which deferred consideration of the motion pending our opinion in Leach, and thereafter denied review. The City thereupon petitioned this court for discretionary review.

This court's commissioner denied review, declaring that Leach nowhere suggests that a different constitutional standard applies to citations and that reference in the citation to a code section will not remedy the omission of an element of the crime. We denied the motion to modify the commissioner's ruling by a per curiam opinion, holding:

The City of Seattle's motion to modify the ruling of the Commissioner of this court in the above entitled case is denied. **The essential elements rule, discussed in State v. Leach, 113 Wn.2d 679, 782 P.2d 552 (1989), applies to citations.**

Hein, 115 Wn.2d at 556.

The respondent cities also argue that compliance with the Washington Rules of Court should satisfy all constitutional requirements for citations which are also used as final charging documents.

At the outset, it is necessary to clarify one point. The parties hereto in their briefing to this court, as well as both Court of Appeals decisions presently before us, rely upon the Criminal Rules for Courts of Limited Jurisdiction (CrRLJ). These rules, however, did not supersede the Justice Court Criminal Rules (JCrR) until September 1, 1987, after these alleged offenses occurred.

Official Rules of Court, Table of Adoptions and Amendments; 108 Wn.2d 1149; Leach, 113 Wn.2d at 685 n.5.

In the Brooke case, the date of the alleged crime was March 17, 1987, and the issuance of the charging document was March 18, 1987. In the Wandler case, the date of the alleged crime and issuance of the charging document was February 3, 1987. Therefore, the correct rules to be applied in both cases are the Justice Court Criminal Rules (JCrR).

While the interests of accuracy require us to note this clarification, it does not make a significant difference in the ultimate outcome of the cases because the relevant rules are quite similar. The one meaningful difference between those two rules is that CrRLJ 2.1(b)(3)(iii) (cited by the Court of Appeals as well as the parties) replaced JCrR 2.01(b)(2)(iii) and added that a citation should also include the "numerical code section". In fact, the citations in both Brooke and Wandler do include the numerical code sections.

Former JCrR 2.01(b), applicable to the cases before us, states

in part:

(1) Issuance. Whenever a person is arrested for a violation of law which is punishable as a misdemeanor or gross misdemeanor the arresting officer, or any other authorized peace officer, may serve upon the arrested person a citation and notice to appear in court, in lieu of continued custody.

(2) Contents. The citation and notice shall include:

(i) the name of the court and a space for the court's docket, case or file number;

(ii) the name of the person, his address, date of birth, and sex;

(iii) the date, time, place

The new rule adds the words "numerical code section" to the list in subsection (iii). CrRLJ 2.1(b)(3)(iii).

and description of the offense charged, the date on which the citation was issued, and the name of the citing officer;

(v) a space for the person to sign a promise to appear.

(3) Release. To secure his release, the person must give his written promise to appear in court as required by the citation and notice served.

(4) Certificate. The citation and notice to appear shall contain a form of certificate by the citing official that he certifies, under penalties of perjury, . . . that he has reasonable grounds to believe, and does believe, the person committed the offense contrary to law. . . . Such citation and notice when signed by the citing officer and filed with a court of competent jurisdiction shall be deemed a lawful complaint for the purpose

of initiating prosecution of the offense charged therein.

(5) Additional Information. The citation and notice may also contain such identifying and additional information as may be necessary.

We do not perceive any conflict between the rule that the essential elements of the crime must be included in a charging document and the requirements of the old or new rule since both rules require a "description of the offense charged". This is congruent with the requirements of the essential elements rule.

[4] As Leach made clear, however, even if the court rules did conflict with the constitutional requirements of the essential elements rule, the court rules cannot diminish constitutional rights.

A defendant's due process right to notice of the offense charged does not depend upon whether the charging document is a complaint or a citation and notice. The requirement of CrRLJ 2.1(b)(3)(iii) that the citation contain a "description of the offense charged" does not circumvent the constitutional requirement that the citation must apprise defendants with reasonable certainty of the nature of the accusations against them. . . . While the Criminal Rules for Courts of Limited Jurisdiction present efficient procedures for initiating prosecution of misdemeanor crimes in courts of limited jurisdiction, application of the rules must not abridge a defendant's constitutional rights.

(Footnote omitted.) State v. Leach, 113 Wn.2d 679, 694-95, 782 P.2d 552 (1989). See also State v. Pelkey, 109 Wn.2d 484, 490, 745 P.2d 854 (1987) (court cannot sustain an interpretation of a court rule which contravenes the constitution); CrRLJ 1.1 ("These rules shall not be construed to

affect or derogate from the constitutional rights of any defendant.").

The respondent cities also rely upon CrRLJ 2.4(b). The predecessor of that rule, JCrR 2.04(b), applies to the cases before us; it declares as follows:

Citation and Notice. No citation and notice issued pursuant to the provisions of rule 2.01(b) shall be deemed insufficient for failure to contain a definite statement of the essential facts constituting the specific offense with which the defendant is charged, nor by reason of defects or imperfections which do not tend to prejudice substantial rights of the defendant. Any defendant upon request shall be entitled as a matter of right to a bill of particulars.

The newer rule, CrRLJ 2.4(b), has made the granting of a bill of particulars discretionary with the court. See generally 4A L. Orland & K. Tegland, Wash. Prac., Rules Practice 776 (4th ed. 1990).

We discern no conflict between this rule and the requirement that the essential elements of the alleged crime must be included in all charging documents. We decline to interpret court rules so as to diminish constitutional rights. The declaration in the foregoing court rules that no citation is insufficient for failure to contain essential facts is consistent with the Leach distinction that detailed facts are not required when an officer gives a citation to the accused at the scene of the alleged crime because the accused will know the "incident" to which the charge refers. By knowing the facts, however, the accused will not necessarily know what crime is being charged, its definition, or the elements of that offense.

The City of Seattle argues that since the **"essential facts"** are known to the defendant Wandler, a requirement that the

citation include the statutory elements of the crime is unnecessary and unreasonable. This argument is not tenable because it assumes a defendant's actions always constitute the **"essential facts", i.e.**, that the defendant is always guilty of the crime charged.

In Brooke, the Court of Appeals concluded that a citation must be deemed sufficient if it contains a reference to the numerical code section number of the offense along with a brief description of the offense, that court's reasoning being it is unrealistic to expect arresting police officers to know the elements of every crime.

Auburn v. Brooke, 60 Wn. App. 87, 93, 803 P.2d 1325 (1991).

Under the Washington Rules of Court, an officer is required to certify on the citation, under penalty of perjury, that he or she has reasonable grounds to believe the person cited has committed the offense.

JCrR 2.01(b)(4). See CrRLJ 2.1(b)(5) (probable cause).

It is difficult to understand how such a certification could be made absent at least some knowledge of the elements of the offense. [knowledge and belief]

[5] In any event, even though an officer in the field may not know (or have access to) a listing of elements of an offense for which a citation is issued, under the court rules above referred to, a citation may be amended if the defendant is not prejudiced thereby.

JCrR 4.10; CrRLJ 2.4(f); State v. Leach, 113 Wn.2d 679, 694, 782 P.2d 552 (1989).

The amendment rule is a liberal one and should ordinarily permit any necessary amendments.

[6] The only reasoned basis by which we could uphold the Court of Appeals decisions herein would be to conclude that a reference in a citation to the numerical code section defining the offense incorporates the contents of that code section into the citation used as a final charging document. The very real problem with so concluding, however, is that the defendant would have the burden of locating the relevant code (in these cases the former Auburn Code and the Seattle Municipal Code) and **determining the elements of the offense** from the proper code section. In misdemeanor and gross misdemeanor cases especially, where defendants are often unrepresented by counsel, that is an unfair burden to place on an accused.

In many cases, people who are issued citations will simply pay the fine, and may even serve jail time, without taking the time and expense required to hire counsel or to mount their own defense. It is only fair that those accused of all crimes, however minor, be informed of the elements of the charges against them before they decide to forgo a defense. We have repeatedly said that defendants should not have to search for the rules or regulations they are accused of violating.

State v. Kjorsvik, 117 Wn.2d 93, 102, 812 P.2d 86 (1991); State v. Jeske, 87 Wn.2d 760, 765, 558 P.2d 162 (1976).

A long line of cases have held that it is sufficient to charge in the language of the statute if the statute defines the offense with certainty.

Kjorsvik, 117 Wn.2d at 99 n.4 and cases cited therein.

As Leach explained (citing to State v. Royse, 66 Wn.2d 552, 557, 403 P.2d 838 (1965)), an information must state the acts constituting the offense in ordinary and concise language **and should not just state the name of the offense**.

Leach, 113 Wn.2d at 689.

[7, 8] Since we reaffirm Leach and Hein, as further explained herein, the proper analysis by which to consider the sufficiency of these charging documents is that found in our recent opinion in State v. Kjorsvik, 117 Wn.2d 93, 812 P.2d 86 (1991). Kjorsvik held that all elements of a crime must be included in the charging document.

In a footnote in Kjorsvik, we observed that we declined therein to address the issue of sufficiency of misdemeanor citations because that issue was not before this court, and because the Court of Appeals cases presently before us were pending at that time. Kjorsvik, 117 Wn.2d at 97 n.1.

It also held that the constitutionality of a charging document can be first raised on appeal but will be more liberally construed in favor of validity if not challenged until after verdict. Kjorsvik, 117 Wn.2d at 102. We also held that if such issue is raised for the first time on appeal, the 2-prong Kjorsvik test asks: (1) do the necessary facts appear in any form, or by fair construction can they be found, in the charging document; and, if so, (2) can the defendant show that he or she was nonetheless actually prejudiced by the inartful language which caused a lack of notice. The first prong of the test looks to the face of the charging document itself and there must be some language in the document giving at least some indication of the missing element.

Kjorsvik, 117 Wn.2d at 106.

One does not reach the second or prejudice prong unless there is some language relating to the element — however inartful — in the document. In the cases before us, the citations make no attempt to state the elements or the facts supporting the elements; they merely state the numerical code sections defining the offenses and the titles of the offenses alleged.

Brooke

The citation in Brooke simply stated:
"9.40.010(A)(2) Disorderly Conduct."

It is not even apparent from the citation that the numerical section cited refers to the former Auburn City Code, though the parties agree that it does. The former version of Auburn City Code 9.40.010(A)(2), in effect when Brooke allegedly committed his offense, stated:

A. A person is guilty of disorderly conduct if, with a purpose to **cause public danger**, alarm, disorder, nuisance, or if with the knowledge that he is likely to create such public danger, alarm, disorder or nuisance**, he willfully:**

2. Engages in fighting or in violent, threatening or tumultuous behavior; . . .

The City of Auburn concedes that the citation did not specify the elements of the offense alleged in the citation.

Wandler

Mr. Wandler argues that the citation issued to him, also used as the final charging document, was a complaint and not a citation since he refused to sign it — and also because it was initialed by a city attorney as well as being signed by the issuing police officers.

The critical difference between a citation and a complaint is that a citation is issued by a police officer whereas a complaint is issued and signed by a prosecutor.

JCrR 2.01; CrRLJ 2.1; Leach, 113 Wn.2d at 698.

An officer is allowed to issue a citation without prior approval of a prosecutor,

Leach, 113 Wn.2d at 686; JCrR 2.01(b)(1); CrRLJ 2.1(b)(1).

and when signed and certified by the officer and properly filed, it is deemed a lawful complaint for the purpose of initiating prosecution.

JCrR 2.01(b)(4); CrRLJ 2.1(b)(6).

The signature of the accused thereon is just a promise to appear and allows an officer to release the individual based on that promise.

JCrR 2.01(b)(2)(v), (3); CrRLJ 2.1(b)(3)(v), (4).

The charging document in the Leach case (Elverston portion) was also unsigned by the accused and signed by both a prosecutor and the issuing police officer. In Leach, we treated that document as a citation rather than a complaint. The Court of Appeals decision in Wandler correctly concluded that lack of the defendant's signature and the presence of a prosecutor's initials did not convert the charging document from a citation into a complaint. However, as noted, even a citation must comport with the essential elements rule.

The charging document in Wandler stated:

"11.56.420 Hit/Run; Attended".

The parties agree the numerical citation refers to the Seattle Municipal Code. S.M.C. 11.56.420 states:

Hit and run (attended) — Duty in case of accident with occupied vehicle.

The operator of any vehicle involved in an accident resulting in damage to a vehicle which is operated or occupied by any person shall do the following:

A. Immediately stop such vehicle at the scene of the collision, or as close thereto as possible, and forthwith return to and remain at the scene of such accident until he or she has done the following; and

B. Give his or her name, address and vehicle license number, and exhibit his or her vehicle operator's license, to the operator or any occupant of the other vehicle; and

C. Render to any person involved in such accident reasonable assistance including the carrying or the making of arrangements for the carrying of such person to a physician or hospital for medical treatment if it is apparent that such treatment may be necessary or if such carrying is requested by the person involved in the accident or on his or [her] behalf. Under no circumstances shall the rendering of assistance or other compliance with the provisions of this section be evidence of the liability of any operator for such accident.

The City of Seattle also concedes that the citation did not specify the elements of the alleged offense.

Applying the first prong of Kjorsvik, it is apparent from the

record that in each of the cases before us the necessary elements of the offenses alleged do not appear in any form in the charging documents. Hence, we do not reach the second or prejudice prong of Kjorsvik. And since the essential elements rule applies to misdemeanor and gross misdemeanor citations, the citations herein are defective as final charging documents and the convictions based thereon must be reversed and the charges dismissed without prejudice.

Holt, 104 Wn.2d at 323; Leach, 113 Wn.2d at 687.

The cities have suggested that our continued adherence to Hein and Leach will result in an avalanche of reversals of misdemeanor and gross misdemeanor convictions. We do not accept this as a likely result for several reasons. First, we presume prosecutors have generally understood from Leach and Hein, if not before, that the essential elements rule applies to all final charging documents. In any event, and as a practical matter, this ruling will usually apply only to cases in which convictions are not yet final. Persons convicted of misdemeanors and gross misdemeanors who raise the issue of an insufficient charging document on collateral attack must establish that their rights were actually and substantially prejudiced.

In re Cook, 114 Wn.2d 802, 810-11, 792 P.2d 506 (1990); In re St. Pierre, 118 Wn.2d 321, 328, 823 P.2d 492 (1992); In re Williams, 111 Wn.2d 353, 364, 759 P.2d 436 (1988).

If a petitioner fails to meet the threshold burden of showing actual prejudice arising from constitutional error, the petition will be dismissed.

Williams, 111 Wn.2d at 364.

Errors in final charging documents do not constitute per se

prejudicial error on collateral review.

In re St. Pierre, 118 Wn.2d at 329.

Furthermore, even if a conviction is reversed due to an insufficient charging document, the result is a dismissal without prejudice to the right of the municipality or state to recharge and retry if it so chooses. Our state and federal constitutions both permit retrial after a conviction is reversed due to a defect in a charging document.

Montana v. Hall, 481 U.S. 400, 95 L. Ed. 2d 354, 107 S. Ct. 1825 (1987); Ball v. United States, 163 U.S. 662, 41 L. Ed. 300, 16 S. Ct. 1192 (1896); United States v. Pomponio, 517 F.2d 460, 463 (4th Cir.), cert. denied, 423 U.S. 1015 (1975); State v. Irizarry, 111 Wn.2d 591, 763 P.2d 432 (1988); State v. Markle, 118 Wn.2d 424, 441, 823 P.2d 1101 (1992) (quoting State v. Anderson, 96 Wn.2d 739, 742, 638 P.2d 1205, cert. denied, 459 U.S. 842 (1982)).

Similarly, statutes of limitation usually do not bar recharging a defendant whose conviction has been reversed due to a defective charging document.

See RCW 9A.04.080(3).

Based on the foregoing, petitioner James A. Brooke's conviction for disorderly conduct and petitioner Casper S. Wandler's conviction for hit and run driving are reversed and remanded for dismissal of the charges without prejudice to the refiling of the charges against them.

DORE, C.J., and UTTER, BRACHTENBACH, DOLLIVER, DURHAM, SMITH, GUY, and JOHNSON, JJ., concur.